

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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MARJORIE FERRELL, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	No. C-1-01-447
	)	
v.	)	Judge Sandra S. Beckwith
	)	
WYETH-AYERST LABORATORIES,	)	Magistrate Judge Timothy S. Hogan
INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

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**PLAINTIFFS' MOTION  
TO EXTEND DEADLINES REGARDING EXPERTS**

Plaintiffs, though the undersigned counsel, hereby move this Court for an Order to extend the expert discovery deadlines set forth in Magistrate Judge Hogan's Calendar Order dated January 5, 2006, specifically the April 3, 2006 deadline for Plaintiffs to disclose expert witnesses and produce primary expert reports, and the May 3, 2006 deadline for Defendants to disclose expert witnesses and produce rebuttal expert reports. Plaintiffs' motion is based on all files and records in this case, including the memorandum filed herewith, and any arguments of counsel requested by the Court.

Dated: March 31, 2006

Respectfully submitted,

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One of Plaintiffs' attorneys

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION  
TO EXTEND DEADLINES REGARDING EXPERTS**

**INTRODUCTION**

On January 5, 2006, immediately following the Preliminary Pretrial/Scheduling Conference, Magistrate Judge Hogan issued a Calendar Order setting forth certain case management deadlines, including a deadline of April 3, 2006 for Plaintiffs to disclose expert witnesses and produce primary expert reports, and May 3, 2006 for Defendants to disclose expert witnesses and produce rebuttal expert reports.<sup>1</sup>

By this motion, Plaintiffs seek an extension for these two expert disclosure deadlines. This extension is sought as a result of the Parties' ongoing settlement discussions since January 2006. As a result of these negotiations, Plaintiffs' experts have not yet prepared expert reports, as such reports are expected to result in at least \$250,000 in cost to the Class members – an unnecessary expense if the case is settled at this time.

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<sup>1</sup> On January 6, 2006, Judge Beckwith filed a Notice with additional pretrial and trial deadlines. Judge Beckwith's order did not identify or reference any deadlines for expert disclosures.

It is anticipated that the Parties will know sometime in the near future whether they can agree to settlement. Accordingly, Plaintiffs request leave of the Court to extend the deadlines to disclose expert witnesses and produce expert reports to accommodate the settlement discussions.

As directed by S.D. Ohio Civ. R. 7.3(a), Plaintiffs contacted counsel for Defendants and solicited their consent to this extension. As of the filing of this document, Defendants have not agreed to such an extension.

### **ARGUMENT**

"It has long been recognized that a Court has the inherent power to enter such Orders as may be necessary to the proper administration of the litigation before it." *Peoples v. Wainwright*, 325 F. Supp. 402, 403 (M.D. Fla. 1971); *See also, Amsler v. Smith-Lustig Paper Box Mfg. Co.*, 908 F.2d 972, 1990 WL 106186 at \*1 (6<sup>th</sup> Cir. (Ohio) Jul. 27, 1990)(unpublished). This authority is embodied in Fed. R. Civ. P. 23(d), which states, in part, that the Court may make appropriate orders in the conduct of actions, including issuing orders which determine the course of proceedings or deal with similar procedural matters. *See*, Fed. R. Civ. P. 23(d)(1) and (5). Rule 23(d) further provides that such orders may be altered or amended as may be desirable from time to time. *Id.* The district court judge is authorized to modify a schedule upon a showing of good cause. Fed. R. Civ. P. 16(b).

Plaintiffs have shown such good cause. The parties have been engaged in settlement discussions since last fall, with those efforts accelerating significantly since January 2006. At this time, Plaintiffs are hopeful that a settlement may be reached shortly. Such a settlement would serve the interests of all Parties and the Court by

eliminating the need to further use the Court's time and resources. Moreover, a settlement prior to the significant expenditures required in preparing expert reports would likewise benefit both Class Plaintiffs and the Defendants.

In addition, this extension will not prejudice Defendants in any manner, nor will it result in any expense or undue burden to the Court. Defendants are, obviously, engaged in these settlement discussions, which, if successful, will operate to the benefit of all Parties. If a settlement cannot be finalized, Defendants will still have the same opportunity to fully defend the claims in this action, proceed with expert discovery and pre-trial matters, and take this case to trial. Thus, a brief extension at this time will in no way prejudice the Defendants. Plaintiffs therefore request that the Court exercise its discretion and grant this extension.

### **CONCLUSION**

For the reasons set forth above, Class Plaintiffs respectfully request that the Court extend the January 5, 2006 Calendar Order deadlines for Plaintiffs and Defendants to disclose expert witnesses and submit expert reports.

Dated: March 31, 2006

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be electronically filed the foregoing pleading with the Clerk of the Court using the CM/EFC system which will send notification of such filing to the following:

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Dated: March 31, 2006

/s/ Joseph E. Conley, Jr.